IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.2000 OF 2005

WITH

CIVIL APPLICATION NO.2001 OF 2005

IN

SECOND APPEAL (STAMP) NO.27008 OF 2005

Arjun Sagun Jadhav ...Applicant

Versus

Shri Yashwant Soma Jadhav & Ors. ...Respondents

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Mr.S.M.Railkar for Applicant.

Mr.G.H.Keluskar for Respondent No.1.

Mr.R.D.Oak for Respondents 2 & 3.

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CORAM: A.M.KHANWILKAR, J.

JANUARY 18, 2006.

P.C.

1. Not on Board. Upon mentioning, taken on Board, by consent.

2. Heard Counsel for the parties. Perused

the pleadings. The delay in filing the Second Appeal is one year and 177 days as computed by the Office. The specific case made out by the Applicant, for the first time, is that the Applicant had no knowledge about the passing of the impugned order till he learnt about the order passed by the lower Court dated 12th February 2004 on 14th November 2005 when the Bailiff of the Civil Court, Kudal came to the suit land and informed the Applicant about such order. The case of the Applicant is that the Advocate on record who was entrusted with the matter before the lower Court did not communicate the fact of order having been passed on 12th February 2004, which has resulted in this situation. In the reply affidavit, it is clearly asserted that the Applicant through his Advocate appeared in the execution proceedings on 12th November 2004 and prayed for time for filing reply. This fact is supported by the Roznama, which is placed on record. The roznama for 22nd November 2004 does indicate that Applicant had appeared before the Court as is noted by the lower Court. Respondents further submit that the Applicant thereafter moved a formal application

under their signature on 9th August 2005 for setting aside the order passed by the Executing Court to proceed in the matter on account of no sale. That Application was filed on 9th August 2005. Certified copy of the said Application is produced before me. Even if the latter position is to be accepted as correct, it is obvious that the Applicant was taking necessary steps in the proceedings and moved the formal application on 9th August 2005.

3. Viewed in this perspective, the statement made in the application for condonation of delay that the Applicant had no knowledge about the order dated 12th February 2004 "till 14th November 2005", is incorrect. I am in agreement with the submission canvassed on behalf of the Respondents that the statement made in the application is not bonafide. On the other hand, the record clearly indicates that the Respondents had knowledge about the impugned order passed by the lower Court and had appeared in the execution proceedings on 12th November 2004.

4. As mentioned earlier, delay is of one year and 177 days as computed by the Office, which is inordinate delay. Explanation offered by the Applicant is not only unsatisfactory, but unacceptable. Hence, application for condonation of delay is dismissed.

A.M.KHANWILKAR, J.